IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.10242 OF 2004

Hafiz Urrehman Habbur Rehman Ansari ... Petitioner

V/s.

Irfan Alihussain Ansari
c/o. United Mazdoor Union ... Respondent

Mr.J.K. Jalisatgi with Mr.A.B. Desai for Petitioner
Mr.Y.M. Pendse for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 1, 2005**

P.C.:

. The Petitioner-employer has challenged two orders which have been passed in Reference (IDA) No.18 of 2004. The first order relates to the objection raised by the workman to the appearance of an advocate on behalf of the Petitioner. The second order is in respect of production of certain documents.

2. The workman has objected to the appearance of Mr.N.M. Shivakar who represents the employer under section 36 of the Industrial Disputes Act. According to the employer, Mr.Shivakar is the Vice-President of an association of employers, namely, Bhiwandi Powerloom Majoori Beam Weavers' and Owners' Association. The employer contends that his representative is a nominated member and office bearer of the association and is therefore, entitled to represent him under section 36 of

the Industrial Disputes Act. According to the workman, Mr.Shivakar is a practicing advocate and cannot, therefore, be an office bearer of the association. Apart from this, the workman contends that the resolution under which Mr.Shivakar has been appointed as a Vice-President indicates that the appointment is in the capacity of an advocate for assisting and advising the association in various labour litigations. The Labour Court has refused permission under section 36 and upheld the objections raised by the workman. The Labour Court has found that Mr.Shivakar could not produce any receipt to show that he continued to be an office bearer for the year 2003 or 2004. Mr.Shivakar had also produced the return for the year ending 31.12.2002 only and no further returns of the association. The Labour Court has drawn adverse inference and has cast a doubt on the existence of the association itself.

3. Having perused the documents filed on record, I am of the view that the Labour Court has correctly refused permission to the Petitioner being represented by Mr.Shivakar. The returns do not in any manner indicate that any honorarium was paid to the office bearers. In fact it indicates that expenses were paid for conducting trade disputes. The auditor’s declaration appended to the return for the year ending 31.12.2002 is dated 21.9.2004 and the returns have been

submitted vide their letter dated 20.9.2004. Furthermore, there is nothing on record to show that the Petitioner was a member of the association at the relevant time. I see no reason to interfere with this finding of the Labour Court and the order dated 1.10.2004 is upheld.

4. The next order which has been challenged is the order requiring the employer to produce certain documents from 1972 till today. The employer contends that he has been running the business only for 12 years prior to 2004 and, therefore, it is impossible that there would be any documents prior to that date. Although it is contention of the workman that he was in employment since 1972, this fact has been denied by the employer. The employer has stated that the family business has been over by him and that he is running the same for the past 12 years.

5. In such circumstances, the order of the Labour Court dated 15.10.2004 is required to be modified to the following extent:

> The employer is directed to produce the attendance register, leave register, wage register and record of appointment for the 12 years since he has been running the

establishment within a period of four weeks from today.

6. The order dated 15.10.2004 is, accordingly, modified. Writ Petition is disposed of.

7. Parties be provided an authenticated copy of this order.